

Public Service Commission

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August 7, 2024

Mr. Mark Wallen
Environmental Specialist
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Dear Mr. Wallen:

The Reclamation Division has completed an initial review of the application for final Bond Release No. 2 to Surface Coal Mining Permit NACT-1801, submitted July 11, 2024. Item No. 1 through Item No. 23 must be addressed prior to publishing the public notice or notifying surface owners and governmental agencies. Item No. 24 through Item No. 39 may be addressed at this time or during the technical review period. An inspection of the property as required by NDCC 38-14.1-17 will be delayed until after the public notice has been published and the notification letters have been mailed.

General

1. Coteau presents Final Bond Release No. 2 as a single tract of land (FBR 1801-145-87-29-2) but the bond release application consists of two separate ownership tracts. Please revise the application and attachments to delineate, identify, and provide the necessary detailed information for each tract as required by our Revegetation Success Standards document and the Bond Release Application Form, SFN 19813. (GAW/WWS)
2. Please be more concise and consistent when referring to the acreage within the bond release tract. The bond release application refers to the acreage as "approximately 377" in some sections and others say, "approximately 378". (PJR)

Attachment III – Public Notice

3. The Table of Contents identifies Attachment III as the "Public Notice", but Attachment III is labeled "Legal Advertisement" when opened. Please revise to identify Attachment III in a consistent manner. (GAW)
4. Please revise Attachment III (Public Notice) to clarify the bond release consists of two ownership tracts and that coal was not removed from the SE $\frac{1}{4}$ of Section 29, but portions were affected by mining related disturbance (coal leases not secured). (WWS/GAW/JAR)

5. Attachment III (Public Notice) states that fourth stage bond release is “final release”, but the application form indicates that fourth stage bond release involves revegetation success. Please consider revising Attachment III to clarify that fourth stage release or the final release stage involves a demonstration of reclamation or revegetation success. (GAW)
6. For clarification, please state the year Permit NACT-8503 was approved in Attachment III (Public Notice). (JAR)
7. Please revise the last sentence of the first paragraph in Attachment III (Public Notice) to state mining and reclamation operations are continuing in the consolidated bond area rather than the permit area. (GAW)
8. Please review and revise the second paragraph in Attachment III (Public Notice) to improve clarity. (PJR)
9. A sentence in the second paragraph in Attachment III (Public Notice) indicates that coal was removed from the SE¼ of Section 29, but the coal removal boundary depicted in Attachment Va (SPGM Respread Depths Map) indicates otherwise. Please correct this error. (GAW/JAR)
10. Attachment III (Public Notice) implies county roads were disturbed and reclaimed to Mercer County standards. Please clarify which county road in the bond release was affected by mining or delete the sentence if no county roads were affected by mining activities. (GAW/WWS)
11. Attachment III (Public Notice) states the approved post-mining land uses are tame pastureland, developed water resources, and a portion of section line right-of-way. The Reclamation History subsection in Attachment VI (General Information) states the approved post-mining land uses for the bond release tract are tame pastureland, developed water resources, portions of a section line right of way, cropland, and native grassland. Both sections are also missing the conservation tree planting post-mining land use as approved in Permit NACT-1801. Please update the public notice with all the approved post-mining land uses contained in the bond release tract. (AAC)
12. Please depict and label the boundary of Permit NACT-1801 on the Newspaper Publication Notice Map in Attachment III (Public Notice) to allow an interested party to realize the bond release area in relation to the permit area. Also, please include other local landmarks on the map such as County Road 26, Dakota Gasification Company, railroad corridors, the West Branch of Antelope Creek and the intersection of County Roads 21 and 26. The map currently appears to incorrectly show County Road 21 passes along the south side of the bond release tract. (WWS/GAW)
13. Please update the scale bar on the Newspaper Publication Notice Map in Attachment III (Public Notice) to accurately reflect the distance and include the measurement unit (i.e. yards, feet, miles, etc.). Please also address this issue on all other maps throughout the bond release application. (WWS/PJR)

Attachment IV – Letters to Interested Parties

14. Attachment IV (Letters to Interested Parties) indicates that Kasey L. Butler ETAL and LAB Family LLP, Allegra Boeckel are **adjacent** surface owners. However, Section 1.5.3 (Surface and Coal Ownership Map) of Permit NACT-1801 provides that LAB Family LLP and Kasey L.

Butler are surface owners of the SE¼ of Section 29 as well as adjacent surface owners. Please review and revise the application as appropriate. (GAW/WWS/JAR)

15. The letter to Randy and Susan Byrun in Attachment IV (Letters to Interested Parties) is unnecessary since they are not surface owners or adjacent surface owners to the bond release area. Please remove this letter from Attachment IV. (JAR)
16. Please update page 1 of Attachment IV (Letters to Interested Parties) to include a subsection for a list of all surface owners similar to the “Adjacent Surface Owners” subsection. (JAR)
17. Please include a letter for Bryan W. Aalund and Kelly J. Aalund in Attachment IV (Letters to Interested Parties) since they are identified as adjacent surface owners in the SW¼ of Section 28 and NW¼ of Section 33 in Section 1.5.3 (Surface and Coal Ownership Map) of Permit NACT-1801. (JAR)
18. Please revise Attachment IV (Letters to Interested Parties) to clarify the bond release consists of two ownership tracts and clarify coal was not removed from the SE¼ of Section 29, but portions were affected by mining related disturbance (coal leases not secured). (WWS/GAW/JAR)
19. Attachment IV (Letters to Interested Parties) implies county roads were disturbed and reclaimed to Mercer County standards. Please clarify which county road was affected by mining or delete the sentence if no county roads were affected. (GAW/WWS)
20. Letters in Attachment IV (Letters to Interested Parties) state the approved post-mining land uses are tame pastureland, developed water resources, and a portion of section line right-of-way. The Reclamation History subsection in Attachment VI (General Information) states the approved post-mining land uses for the bond release tract are tame pastureland, developed water resources, portions of a section line right of way, cropland, and native grassland. Both sections are also missing the conservation tree planting post-mining land use as approved in Permit NACT-1801. Please update the letters to interested parties with all the approved post-mining land uses contained in the bond release tract. (AAC)
21. A copy of the letter to the Mercer County Planning and Zoning Commission was missing from Attachment IV (Letters to Interested Parties). Please provide a copy of this letter. (AAC)
22. In Attachment IV (Letters to Interested Parties), the letters addressed to the area landowners state approximately 205 acres were disturbed from mining or associated disturbance while the letters addressed to government agencies state approximately 171 acres were disturbed from mining or associated disturbance. Please review and update all letters to provide the correct acreage of land affected by mining and associated disturbance. (AAC)
23. Please incorporate any revised information from the Public Notice into Attachment IV (Letters to Interested Parties) as necessary. (JAR)

Attachment Va – SPGM Respread Depths Map

24. The SE¼ of Section 29 incorrectly identifies Helling as a surface owner on Attachment Va (SPGM Respread Depths Map). Please revise Attachment Va to replace Helling with LAB Family LLLP and Kasey L. Butler as surface owners in the SE¼ of Section 29 within the bond release tract. (JAR)

25. Please include the pink line, which is assumed to delineate grade approval areas, in the map legend in Attachment Va (SPGM Respread Depths Map). Also, please label each grade approval tract on the map with their corresponding approved SPGM respread depths. (MLJ/GAW)

Attachment VI - General Information

26. A sentence in the second paragraph of Attachment VI (General Information) states that reclamation began in 2001 and continued until 2012 when 205 acres were reclaimed. Please clarify if 205 acres were reclaimed in 2012 or if this is the total amount of acreage reclaimed. (GAW)
27. The fifth sentence of the second paragraph on page 2 in Attachment VI (General Information) incorrectly states no coal was removed from the SW $\frac{1}{4}$ of Section 29. This appears to be a typographical error. Please correct the SW $\frac{1}{4}$ of Section 29 to the SE $\frac{1}{4}$ of Section 29 in this sentence since no coal was removed from the SE $\frac{1}{4}$ of Section 29. (JAR)
28. Table VI-1 in Attachment VI (General Information) is entitled "Breakdown of land use within bond release tract SW/NW $\frac{1}{4}$ ". However, the table includes land in the SE $\frac{1}{4}$ of Section 29, and it is not clear what SW/NW $\frac{1}{4}$ is referencing. In addition, the last column of Table VI-1 is entitled "Total per Section" but both rows are part of Section 29. Please consider revising the column heading to "Total Acres" to provide clarity. (GAW/AAC/JAR)
29. The Liability Period subsection in Attachment VI (General Information) states the bond release tract contains tame pastureland, a conservation tree planting, three stockponds, Southwest water tap, native grasslands, cropland, and roads. The Reclamation History subsection states the post-mining land use for the bond release tract is tame pastureland, developed water resources, portions of a section line right of way, cropland, and native grasslands. Please review and update Attachment VI as needed to provide clarity and consistency. (AAC)
30. The first sentence of the Reclamation Practices subsection in Attachment VI (General Information) suggests topographic changes were made on areas of associated disturbance. Please review and revise to provide clarity. (GAW)
31. The last sentence of the Reclamation Practices subsection in Attachment VI (General Information) describes the bond release as a single tract, but revegetation success must be demonstrated by surface ownership. Please revise to provide clarity. (GAW)
32. Please revise the first paragraph of the Reclamation History subsection in Attachment VI (General Information) to provide clarity. Planting the approved seed mixture initiates the 10-year responsibility period, but the first sentence indicates that SPGM respread, reseeding and revegetation initiates the liability period. It is not clear what is meant by the statement "The 10-year liability period is initiated when anything considered outside of "normal conservation practice management" is utilized as a management tool." It seems the sentence should read "the 10-year liability period is **re-initiated** when anything considered outside of normal conservation practice management is utilized." The fourth sentence suggests there is a difference between "disturbed lands" and "lands deemed associated disturbance". Please revise to provide clarity. (GAW)

33. Please revise the last sentence of the second paragraph of the Reclamation History subsection in Attachment VI (General Information) to clarify pre-mine topsoil and subsoil depths need to be replaced on prime farmland soils affected by associated mining disturbance and that prime farmland soils overlying areas of coal removal are subject to the 48-inch SPGM respread depth requirement regardless of the depths of soil present prior to mining. (GAW)
34. No information regarding the conservation tree planting was provided in Attachment VI (General Information). Please update Attachment VI with information on the conservation tree planting, including species planted, planting dates, and future management strategies. (AAC)
35. Please revise Attachment VIa (Revegetation Initiation Dates and Land Use) to clearly annotate that the cropland in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29 is undisturbed. Also, the map legend label for the dashed green line states that it depicts the bond release boundary, but it appears to be the coal removal boundary. Please revise the legend label for the dashed green line accordingly. (PJR/JAR)

Attachment VIII – Wildlife Assessment

36. Attachment VIII (Wildlife Assessment) references the 2020-2021 Wildlife Monitoring Report for evaluating post-mining habitats and wildlife monitoring data. The 2022-2023 Wildlife Monitoring Report has updated information on post-mining habitats and wildlife monitoring data found in the Long-Term Area Specific Analysis section. Please update Attachment VIII (Wildlife Assessment) to reference the 2022-2023 Wildlife Monitoring Report's Long-Term Area Specific Analysis section and include relevant information from the South Study Area subsection. (AAC)

Attachment IX – Tame Pastureland

37. A sentence in the last paragraph on page 1 of Attachment IX (Tame Pastureland) states one to four plots were clipped at each sample location, which are enclosures that exclude grazing. Please clarify how the number of quadrants clipped at each sample location was determined and why it is appropriate to combine the data without factoring in the acreage of the two management units (SW $\frac{1}{4}$ & NE $\frac{1}{4}$). The number of quadrants sampled does not correlate with the number of sample locations or the representative size of the two management units. For example, in 2022 twenty-two samples were taken from nine enclosures in the SW $\frac{1}{4}$ and nineteen samples were taken from four enclosures in the NE $\frac{1}{4}$. Each of these samples are given equal weight even though the nineteen samples represent approximately 50 acres of reclaimed land while the 22 samples represent approximately 115 acres. Please revise the last paragraph on page 1 of Attachment IX to clarify how sampling was conducted to accurately estimate the population mean. (GAW)
38. The 2020 production tables on pages 2 and 10 of Attachment IXa (Production Standards Calculations) are entitled native grassland. These tables should be entitled tame pastureland to avoid confusion. (GAW)

Attachment XIII – Roads

39. Please include correspondence from the Mercer County Road Superintendent that states the County is satisfied with the re-constructed section line road along the west side of the SW $\frac{1}{4}$ of Section 29. (GAW/ACC)

Mr. Mark Wallen

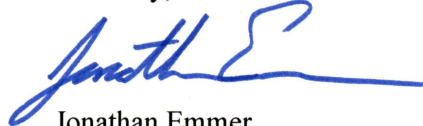
August 7, 2024

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Please be aware the Reclamation Division must conduct SPGM depth verification probing on the bond release area to ensure that all grade approved areas were respread to the approved topsoil and subsoil resspread depths prior to bond release approval. Consequently, Item No. 25 above must be satisfactorily addressed so the Reclamation Division can corroborate each grade approval tract and their corresponding approved SPGM resspread depths prior to conducting the SPGM depth verification probing. The Reclamation Division will coordinate with Coteau prior to any work being conducted.

If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

cc via email only: Mike Berg (michael.berg@nacoal.com)